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The Gavel

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Cleveland-Marshall College of Law

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THE GAVEL

Thanks, Neeta!

Volume 25 Issue 13

Cleveland-Marshall College of Law

June 1, 1977

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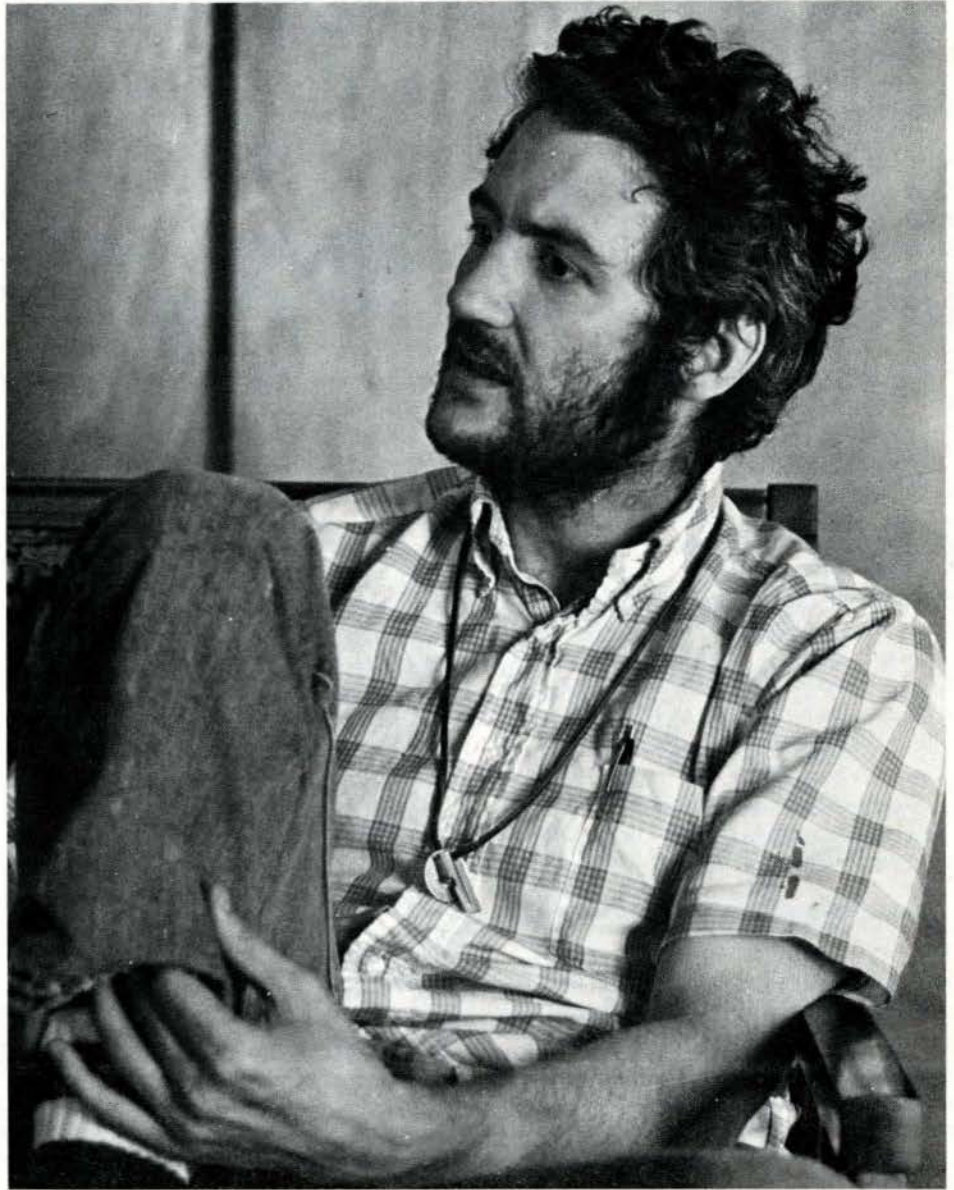
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ASHBY EXPLAINS CAUSE

By Paul Bellamy and Douglas
Wolinsky

In the public's eye, Ashby Leach exists in a decidedly two dimensional world. His image as a terrorist looms as high as the Chessie System's offices in the Terminal Tower, which he occupied at gun point last summer, while his reputation as a madman stretches wider than the pregnant wife he wanted to give birth to his child on Public Square. Viewed on this two dimensional plane, one perceives these events as if seeing them on an eight by ten glossy print; their existence is obvious, but a lack of depth makes an understanding of why they occurred impossible.

During a two hour interview conducted on the last day of his forty-one day hunger strike, we attempted to develop a sense of perspective that might explain the recent controversies in Ashby Leach's life. The result was a study of the recent history of the United States; of a naive smalltown Appalachian boy; of the Vietnam War; of unemployed veterans and desperation; and finally, a realization that the law, which is the embodiment of society's pragmatic



"I want to see constructive change. I'd like to see it brought about without death and bloodshed."

values, must at some time yield to an individual's interpretation of justice based on his inner sense of what is morally right.

We began our interview with Leach by asking if he would mind our recording the conversation. He indicated that it was fine with him for the recorder to be on. As we fussed with the machine and cassettes there was a lull. But as soon

as the tape was in place and on, as if on cue, he started to talk. We had yet to even ask a question.

He began his monologue (for most of what followed more closely resembled a prepared talk than an interview) with an explanation of his recent "demonstration" on Public Square. Leach's wife was to give birth to their child at the Veterans

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THE GAVEL

Cleveland-Marshall College of Law

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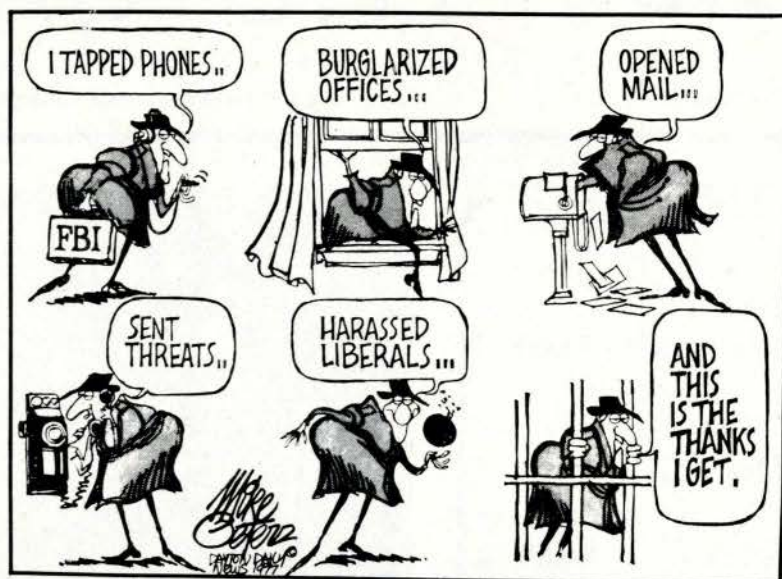


The Gavel, Cleveland-Marshall College of Law, Cleveland State University, Cleveland, Ohio 44115. 216/687-2340.

SBA Notes

By the time you read this we will have a new vice-president elect, necessitated by the resignation of Marty Schneider, effective June 12. Although this entire quarter has been filled with entirely too much politics, there can be no question as to the legitimacy of the process itself. The Committee of 1000 confirmed the original election of Schneider and Chic Natkins and decided upon a method of filling a vacancy in the Vice-President's office. I have endeavored to work with the Committee of 1000, and I believe it was well worth the extra time and effort to have it involved in such important decisions.

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A Gavel-Good-Bye Editorial

ALL PUNCHES PULLED

Although the Gavel is of little significance to most at C-M--perhaps a diversion, occasionally an irritant--I found it consuming most of my time within these 'hallowed walls.' But many other people down here in C-M's bowels gave the Gavel a lot of their time, too; most gratuitously and a couple for less remuneration than I got, which wasn't much. So even if no one reads this, for the sake of posterity I want to take this space to thank the people who devoted a good part of their time and talent making and improving the Gavel.

(Incidentally, someone does save the Gavel for posterity! His name is Millard Jordan, and he's the University Archivist. Once I stopped sending issues to him to see if he really cared. First, I got a memo--this University is big on memos. But I held out. Then, one day I walked in the office and saw this odd person sorting through our scrap issues. I didn't know if it was Millard or a disciple. I didn't think it'd be cool to ask him to take out a subscription, so I put the Archives back on the mailing list.)

(Speaking of subscriptions, someone actually subscribes to the Gavel. He's an old conservative lawyer who lives in Shaker Heights--probably just keepin' an eye on us. Somebody told me he thinks last

year's Gavel was more exciting but this year's looks a little better.)

Jack Kilroy and Rita Fuchsman spent many long hours writing, editing and laying-out the Gavel. Their good humor and charismatic ability to attract a party made my job much more bearable. (You can expect more improvements next year with Jack as editor.) Kurt Olsen and Jaimie Swisher were also instrumental in improving the paper and administering its business.

Carol Vlack and Gail Natale (with whom I enjoyed arguing and, more often, in whose arguments I found myself involved) provided very much of the copy for the paper, investigated stories and tried to teach this ex-polisci jock something about journalism.

Two close friends of mine (both of whom drink more coffee than anybody in Cleveland, Foxberg and Norwack)--Scott Mahood and Dennis McDonough--gave me invaluable support and advice as well as coming through with good copy in the pinch.

Finally, I'd like to thank the Staff and our contributors who provided many good articles and kept us informed--because they cared enough to try to keep our readers informed.

Thanks, folks.

Michael G. Ruppert

Ashby Leach Fights For Justice

from page 1

Monument as a protest of the omnipotent military industrial complex. "We were going to have this child out there by the Veterans Monument....kind of as a symbolic thing, for a new generation of people, a new generation of children, that aren't going to be used by a corporate power structure and the government to fight expeditionary wars."

Leach's "symbolic speech" was rudely interrupted by the Cleveland police. As his wife's labor progressed and grew more intense, so did the small crowd surrounding the Leaches. The "crowd" consisted mostly of friends and well-wishers who grew panicky as Mrs. Leach's grimaces became more pronounced, the contractions becoming more demanding and regular. Someone called the rescue squad (the cops soon followed) and though Leach succeeded in holding them off on their first appearance, the second time they came (some 10 or 20 minutes later) Leach succeeded only in getting arrested for disorderly

conduct. His wife was rushed to Metro General (where she gave birth some four minutes after arrival) and Leach was taken to 21st and Payne, where he was later to slit his wrists.

Leach and his wife are both licensed practical nurses with some obstetric experience. Leach claimed his aborted demonstration on the Square was perfectly "natural" albeit "unusual." He blamed the failure of execution on "rightly motivated" friends, who, lacking delivery experience, panicked as his wife's labor progressed.

To understand Leach, it is necessary first to understand what he wants. The GI bill, inter alia, provides supplemented benefits for veterans who are enrolled in qualified employer training programs for any skilled occupation. Leach's problem with Chessie is two-fold. First, the veteran's employer must "register" its training program with the V.A. which entails paperwork and government regulation. Second, the provision for supplemental benefits

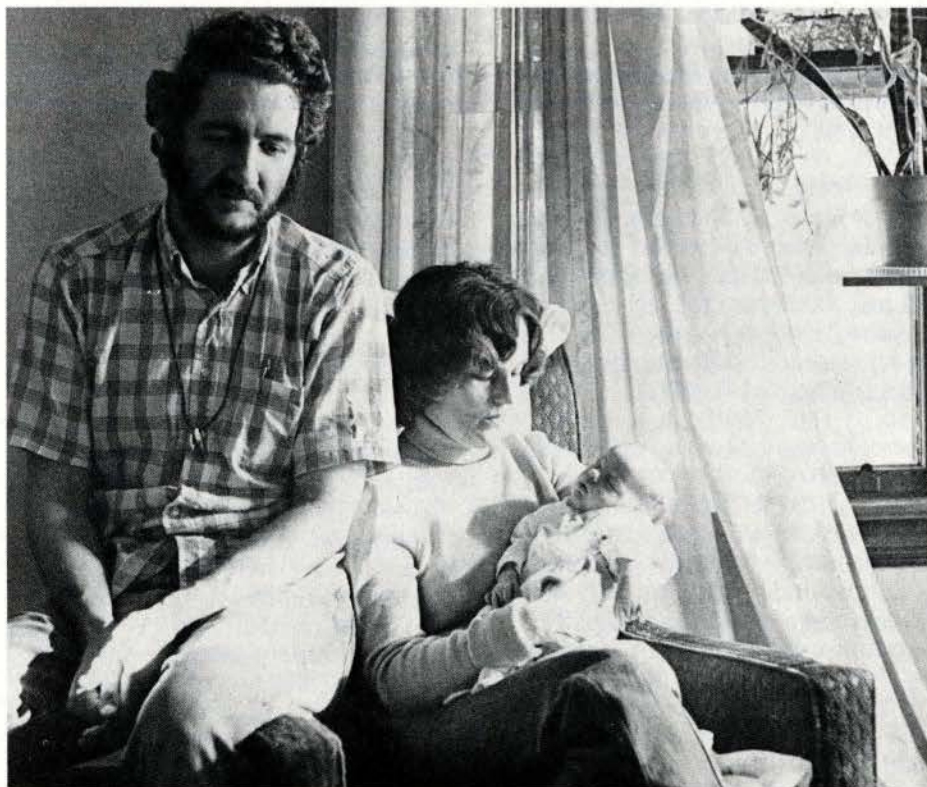
is not mandatory. If a company such as Chessie doesn't want to register its training or apprenticeship program, it doesn't have to. This, of course, leaves the veteran without his supplemental benefits, receiving only what the company chooses to pay its veterans. Leach feels that Chessie's non-participation is a rip-off -- unfair to himself and other veterans in Chessie's trainee and apprenticeship programs.

Chessie has suggested that its failure to register its training programs with the V.A. is due largely to a lack of initiative on the part of Leach's union, the International Association of Machinists. Says Leach, "It's a lie. It's absolutely a lie. The union has repeatedly requested and encouraged them (Chessie) to do this (register its training program) but they absolutely just weren't going to mess with it. The International Association of Machinists is the same union that represents the people at the L & N Railroad and the L & N does it. The Seaboard Coastline does it. The Illinois Central Gulf and Western does it. It's the same union that represents the people over here at Republic Steel and they do it. There's no validity to that."

Chessie has claimed that its hiring policies favor Vietnam Veterans. Retorts Leach, "Well that just means there are that many more Vietnam Veterans being cheated out of these rightful benefits, because Chessie doesn't want to be bothered with doing a little paperwork. What gives them the right to have that type of control over this society, over the people? They (Chessie) totally pervert and rechannel the direction or focus by not dealing with the fact that they don't participate in this program because of the paperwork involved."

Leach's frustration extends beyond his dealings with Chessie. Immediately prior to his siege in the Terminal Tower, he sent off a form letter requesting help in his campaign for supplemental benefits to every congressman and senator in the federal government. The response was discouraging. "My

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"I know so much more now than I knew when I was out of high school."

Ashby

from page 3

Congressman, who I had been writing to for about six years, sent me back a letter that said, 'I just don't know of anything more that can be done.' I looked at that letter and I wrote down there at the bottom, 'Well, I do.' And he did.

Leach has drawn some broader conclusions from his experience with Chessie and the Federal bureaucracy. "I'm not a communist but I'm definitely against capitalism, because capitalism by its very nature says that two dollars worth of paperwork (which would be the savings involved for Chessie) is more important and more relevant than the consideration of a man's rightful benefits."

His experience has also led him to reconsider the criminal justice system. "Originally, my bond was \$450,000. I wrote the judge (Sawicki) a letter referring him to the 8th Amendment and pointing out that Dallas Stuckey had heinously murdered an eight-year-old little girl and his bond was \$100,000. I didn't draw a drop of blood. I made a big noise -- 'The railroad is an asshole!' 'Oh my God, you can't do that!' But that was basically what I was trying to say....Eventually this finally got through Judge Sawicki's head and my bond was reduced to that of a murderer of little children." On Sawicki's gag order: "I think it's scary. I think it was embarrassing for a judge to do that."

Leach was asked whether he thought his jury had protected him from the machinations of the legal process, "I think my jury had more access to the facts than most people and they knew that the shotgun was loaded with letters and that my actions were not intended in anyway a criminal context."

"I think I should pay a price, yeah," but Leach feels that the kidnapping charges weren't justifiable. "This is a new phenomenon in this society, where people are detained or restrained. Some other charge would have been far more appropriate than the consequences that come down with kidnapping."

OK PATTY
YOU CAN GO ...
BUT IF YOU EVER
GET KIDNAPPED
AGAIN I'M
THROWING
THE BOOK
AT YOU.



"I was found guilty of extortion. Well my question is how can a person, a veteran, be guilty of extorting the GI bill out of a corporation? It's my contention that they don't have the right to deny it to us in the first place. But whether or not they have the right they got the power, that's obvious."

On psychiatry and the law: "I have a tendency to lean a little more towards Szasz than the commonly accepted view of psychiatry. It's now reached a point where they're saying 3, 4, 5, year old children are schizophrenic. It's a bunch of shit, to me, or at least too large degree fecal material....I was on my way to being railroaded into Lima State for what I did and being denied my right to trial. But people who saw what this issue was (Leach's attorneys and the Vietnam Veterans Against the War) prevented that. Without them that basic right may have been denied me."

After his trial Leach went on a hunger strike vowing not to eat until Chessie complied with his demands. The day we met with Leach he had just resumed a solid food diet. The subject was raised by our question concerning his suicide attempt in the city lockup. "I was betting a lot on this (the Veterans Monument nativity) and I was thinking my wife's alright, the child's born and I missed my Biggie. I just decided not

to starve like a dog which is exactly what they wanted me to do. So I had a razor blade on my person and when I got back there I thought I would cut the radial arteries. I thought I'd rather go out in a pool of blood than shrivel up and starve like a dog. My God, 33 days to me seems like enough."

If Leach could ever be said to represent anyone other than himself it is the disaffected and disenfranchised Vietnam Veteran.

"There's a lot of people like me. Lied to, messed over and pissed off, about the Vietnam war. I wasn't even drafted. One of those kind. Maybe it's a question of loyalties. This society has now reached a point where there's not too much respect for the old standard bearer American Legion guy walking down the street carrying a flag, hollering 'Hooray.' So as an alternative a lot of people have turned to corporate loyalties."

"A lot of veterans feel like double chumps, you been used, you been had. I can see where Black Vietnam Veterans would be angrier than I am and I'm damned angry. At what I feel has been perpetrated on me, on my fellow countrymen, on my country. This is my country too. The wrong people have paid the price. It ought to be those dirty politicians and those corrupt corporate officials that made a lot of money off

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PAROCHIAID CHALLENGED

By Gail Gianasi Natale

Ohio's latest parochiaid statute -- an \$88 million program providing various "auxiliary services" to the state's 260,000 pupils in 720 private schools -- will be declared unconstitutional by the U.S. Supreme Court, predicts Prof. Kevin Sheard.

But, says one of C-M's resident Constitutional law experts, some portions of the law are likely to be upheld in light of previous high court rulings.

The latest round in about five years of litigation involving the American Civil Liberties Union (ACLU) opposition on First Amendment grounds to state aid to parochial schools was played at the high court with oral arguments in Washington last month.

ACLU attorney Joshua J. Kancelbaum of Cleveland argued against massive aid to non-public education in **Wolman v. Essex** (now **Wolman v. Walter**) named for the Ohio ACLU Executive Director Benson A. Wolman and former state schools superintendent Martin W. Essex.

The acceptance of a **Wolman v. Essex** case by the Supreme Court had been predicted by Sheard to his Con Law classes.

ACLU's arguments follow "two separate lines of precedent," according to Sheard. One is the 1971 **Lemon v. Kurtzman** decision that established a three-part test for state aid: that the program have a secular purpose; that, in practice, the program neither advances nor hinders religion; and that it must not cause excessive entanglement between church and state.

These tests were affirmed in the 1975 **Meek v. Pittenger** decision which held, inter alia, that provision of audio visual aids to parochial school was unpermissible.

On the other hand, **Board of Education v. Allen**, a 1968 decision, allows textbook loans to parochial school pupils. Some observers feel the two holdings are not reconcilable and, in fact, Kancelbaum and the ACLU have asked the Court to overrule **Allen**, something Sheard predicts will not happen.

ACLU contends that the new Ohio statute, R.C. 3317.06, passed after **Meek** effectively invalidated the previous R.C. 3317.062, still violates the Establishment clause even though it ostensibly provides for the loan of materials to pupils and their parents rather than to the church-schools.

"Given the nature of the items loaned and the surrounding circumstances the pupil-loan concept is a mere sham," Kancelbaum argued in his brief.

Of the 720 chartered nonpublic schools in Ohio in 1974-75 all but 29 were sectarian; 657 were Catholic and these had more than 92% of the non-public enrollment.

ACLU argues that six issues in the latest law that violates the Establishment Clause. In addition to the statute itself, the civil liberties group feels that provision of diagnostic services -- including speech and hearing and psychological services--on parochial school grounds is unconstitutional, requiring "unpermissible public surveillance" because of the communication between public personnel and parochial school pupils.

Sheard predicts that diagnostic services will be held constitutional.

Provision of remedial and therapeutic services, which under the **Meek** holding cannot be performed on parochial school premises, are challenged by ACLU when they are offered at public centers or mobile annexes to a religious institution because "it does not erase the potential for sectarian influence condemned in previous decisions."

If the services are not provided as part of a general shared time program for all pupils "it improperly confers a special benefit on a sectarian class," Kancelbaum told the court.

Therapeutic services are also likely to be upheld, Sheard predicts.

Standardized tests and scoring services, also authorized by the statute, are invalid, Kancelbaum argued, because "they are not loaned to individual pupils" and "are not neutral health services," provided by another provision of

the Act that is not challenged by ACLU.

Sheard expects that this, too, will be upheld.

The Act also authorizes field-trip transportation "to enrich the secular studies of students." Such transportation is "materially different from the busing approved in **Everson v. Board of Education** in 1947, ACLU argued. Potential scheduling conflicts among schools wanting to use school buses "provides much greater potential for entanglement than does commuter busing between school and home."

Sheard predicts that the Court will agree and overturn this provision.

As for the textbook loan provision, which also allows the lending to pupils and their parents of "book substitutes" Kancelbaum admitted to the Court that he was asking it to overrule **Allen** but he also argued that such substitutes "could include auxiliary materials prohibited in **Meek**" and in **Public Funds for Schools v. Marburger** (1974). Most of the oral argument centered around auxiliary materials.

"Maps are not like textbooks with a fixed content," Kancelbaum told the Court. They lend themselves to such religious study as the Diaspora and the Crusades.

In addition, such materials as wall maps are incapable of being loaned to individual pupils.

Chief Justice Warren Burger indicated that **Allen** had settled the issue as far as he was concerned and that he felt that educational advances made graphics and visual aids the "functional equivalent" and "an extension of textbooks."

Sheard feels the Court will not overrule **Allen**.

David J. Young of Columbus, arguing on behalf of parents of parochial school pupils, attempted to distinguish Ohio's parochiaid program from that declared invalid in **Meek**, arguing that materials were lent to pupils rather than churches, that loaned materials had a "secular fixed content" and that the program was policed on a "public-to-public" basis through employees of the public schools' clerk-treasurer offices.

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ASHBY

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that war, that don't give a damn about this country or the veterans or anything but making more money."

As we got up to leave, Leach's parting remark was to suggest we read Szasz's *Ideology and Insanity*. The irony of Leach's suggestion was brought home some days later when a person who has had occasion to know Leach well said, "He's crazy as hell, but not insane."



GOOD LUCK!

*

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* The Gavel is *

pleased to announce

the winner of the Herbert

Hoover Memorial Award --

Interim Dean

* Hyman Cohen. *

BULLETINS

In the only event known to approach the NBA Play-Off for being drawn-out, Stu Miller overcame a strong showing by Bill Howard (21-13, 21-13, 21-19, 21-10) to win in four matches of the best of five contest, May 28, for the Cleveland-Marshall Table Tennis Tournament. Alan Lee, Miller's coach, described Miller's strategy as to keep the ball on the table and occasionally slam. It proved effective as Howard just was not able to take the offensive.

In a somewhat related development, the only event known to take longer than the NBA Play-Off--the SBA election for vice president--will require a run-off. Ruth Yudenfriend, who got 34.1% of the vote, Michael Redlick with 32.5% and Richard Alston will face each other again June 1. Jim Patnode was eliminated in the election held May 27.

Parochiaid

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Thomas V. Martin, assistant Ohio attorney general, argued that materials and services were neutrally available to all. But, he admitted, when questioned by Justice Thurgood Marshall, that such materials as wall maps could not be taken home nor was it likely that a parent could ask for such a map.

Justice Potter Stewart opined that each pupil might be "the loanee of an undivided 1/30th" of a large map. Young could not tell Stewart when the ostensible loan terminated.

Anyone going to the Supreme Court for the first time is likely to be disappointed if s/he expects, as this writer did, to hear the best oral advocacy in the country.

Of the lawyers this writer heard argue at the Court April 25, only Kancelbaum fulfilled the classic criteria laid out in law school, although Young came close.

Dressed in a dark blue pin-striped suit, white-on-white shirt and dark red Pierre Cardin tie, Kancelbaum began with concise arguments and proficiently parried any questions the justices presented. His flawless performance looked painless, belying the hours of preparation behind it.

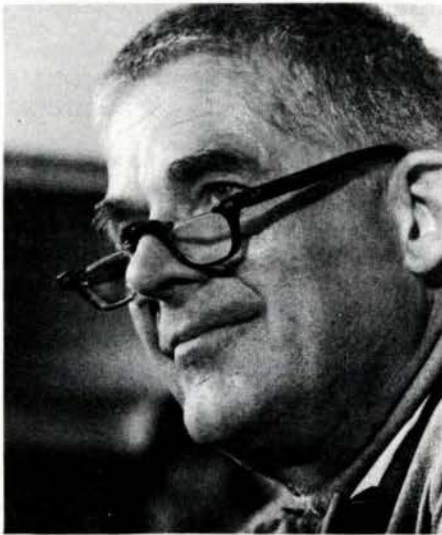


Some say finals are for the dogs. Well they are. Here, [redacted] a student in [redacted] Academy for Canine Discipline, anxiously awaits his first final: Sink or Swim. Good luck on finals -- it's easier than you think.

COX UPHOLDS PRESIDENT

Continuing his winning ways, Terry Brennan was named the Outstanding Oral Advocate in the Eighth Annual Moot Court Night, held May 14, in the Main Classroom Auditorium.

Moot Court Night gives Cleveland-Marshall team members, who have been competing on an intrascholastic basis during the year, a chance to pit their oral advocacy and brief writing skills against each other. This year, 14 students participated in two weeks of preliminary rounds, with Mark Baserman, Brennan, Gary Javore, and Grant Relic winning the opportunity to compete before a distinguished panel of judges.



ARCHIBALD COX

The three judges were former Watergate Prosecutor Archibald Cox, Common Pleas Court Judge Ann McManamon and Federal District Court Judge John Manos. The arguments they heard were based on an actual case involving Common Pleas Judge George White, who judged one of the preliminary rounds.

The judge in this case, feeling that aggravated burglary and burglary require proof of the same elements, refused to sentence a defendant convicted of the more serious offense with the more serious penalty. Instead, he imposed a sentence for burglary. The State sought a writ of mandamus from the state supreme court to force the imposition of a sentence commensurate with the jury's finding of guilty of aggravated burglary.

Baserman, second place winner of the Oral Advocate award, and Javore argued for the judge; Brennan and Relic for the State.

Cox et al. found for the State. Because they argued for the winning side, Brennan and Relic will also receive the Hugo L. Black Oral Advocacy Award. A third winner of that award, not yet announced, will be the winner of the Law Alumni Association Award for Outstanding Brief Writing.

"When your desire is strong enough, you'll find a way."
old Viking proverb

LAW REVIEW ANNOUNCES WRITING COMPETITION

Thomas Downie, newly elected to succeed Clair Dickinson as Editor-in-Chief of the Cleveland State Law Review, announced recently that packets for the Summer Writing Competition may be picked-up by all first-year and second-year-night students who are interested in becoming members of the Review.

Membership in a law review traditionally has been the most prestigious resume item for prospective lawyers as well as an excellent means for sharpening writing and research skills.

Downie stated, "we hope to open the Review up to increased participation by students and faculty, and I'd like to extend an invitation to any student who considers her or himself a good writer to sit down and discuss the Review with myself or any of the present members." He added that "while the Review has traditionally invited the top ten percentage of the Freshman Class to participate as staff members, anyone who wishes to assure her or himself a place in the review should enter and complete the Summer Writing Competition."

SBA Notes

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The fact that such decisions were needed at all, however, speaks to our present constitution, which is entirely ineffective. A committee has been established to rewrite the constitution this summer, and we expect to have a referendum on this new constitution in the fall.

In the meantime, committee sign-up sheets have been posted next to the student lounge. If you're interested, sign-up. Selections will be made next fall.

Concerning Happy Hours -- the noon to six time slot seems to have met with great approval. We'll have more such Happy Hours next Fall.

However, we'll also need help to run them, as well as the coffee and donut program which will also be continued. In addition, we will try a coffee program in the morning for all you early risers.

We are thinking of expanding the social aspect of the law school next year. One item suggested has been to show movies in the auditorium. Let us know how you feel about this idea, and any others you might have.

Finally, if you are going to be around this summer, let us know. We are especially going to need help moving into the new law school and for the orientation in the Fall. Speaking of the new building...while no doubt it is a better facility, there

are still problems to be dealt with. Two of the most pronounced, are a lack of bathrooms and lack of sufficient number of lockers (there will be 856 in the new building). As to the latter, we're hoping to work out a method of moving a few hundred lockers from the Chester Building into the basement of the new building.

One last item, *Nunc Pro Tunc* will be published sometime in June. There should be a sufficient number of copies for everyone. To all the first year students, good luck on your final exams; and to everyone...have a good summer.

Terry Brennan
SBA President

GAVEL GRATUITOUS GOSSIP



SBA secretary turns model: Former SBA secretary Carol Weiss can be seen in the latest issue of the Cleveland Bar Journal advertising their new lawyer's Desk Book. It is not known whether Ms. Weiss plans to continue her career as a model.

Loneliness of the Long Distance Runner: Interim Dean Hyman Cohen is the very proud possessor of a bronze medal from the Jewish Community Center's (JCC) fourth annual Maccabiah games. Cohen finished third in the six-mile run at last month's athletic competition. (Assistant Dean Gale Messerman's brother-in-law, Dr. Terry Messerman, was second.)

The bottom line: "I've gone to law school three years, invested thousands of dollars only to discover the law boils down to 30 tapes and two books" lamented a law student after purchasing his Bar Review materials.

Definition of "W": Authorized withdrawal, that is, (academic reg. 2.2). It's been substantially changed and will become effective Fall Quarter 1977. During the third through eighth week of the quarter in which the course began (including multi-quarter courses), the withdrawal request must be approved in writing by the instructor and an assistant dean. "After the eighth week from the time the course began," the Academic Standards Committee must be petitioned for withdrawal. Read it! Send your recommendations to Asst. Dean Sierk.

New York Times Subscriptions will be available summer quarter, June 20, 1977 to September 2, 1977. The price is \$6.60 for this 11 week period. See Francine Cole in Room 1057. Checks should be made payable to Cleveland State University. The deadline for signing up is June 8, 1977.

OUR TIME & ENERGY

INSTEAD of occupying our minds with the task of finding ways to make the system more tolerable, let's use that time and energy to build a more human and logical system (or non-system) which cannot be controlled by a few.

The Gavel
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